Petition

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82-803

IN THE SUPREME COURT OF
THE UNITED STATES

Kenneth W. Bialecki,

Petitioner,

vs.

Walter R. Little,

an individual,

and

The City of Pittsburgh,

a municipal corporation,

Respondents.

PETITION FOR THE ISSUANCE OF THE WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER A COMPLAINT CHARGING A MUNICIPAL CORPORATION WITH LIABILITY UNDER THE CIVIL RIGHTS ACT OF 1871 (42 U.S.C. §1983) FOR THE CIVIL AND CONSTITUTIONAL TORTS OF ONE OF ITS OFFICERS MUST SPECIFICALLY AVER THAT THE WRONG COMPLAINED OF RESULTED FROM A MUNICIPAL CUSTOM OR POLICY OR IN THE ALTERNATIVE WHETHER PLAINTIFF SHOULD BE AFFORDED AN OPPORTUNITY TO AMEND HIS COMPLAINT SO THAT IT COMPORTS WITH THE REQUISITE AVERMENTS?

II. WHETHER MAGISTRATES SITTING IN COURTS OF NON-RECORD AND LIMITED JURISDICTION ARE ENTIRELY SHIELDED BY THE DOCTRINE OF JUDICIAL IMMUNITY FROM LIABILITY UNDER THE CIVIL RIGHTS ACT OF 1871 (42 U.S.C. §1983) FOR THEIR CIVIL AND CONSTITUTIONAL WRONGS?

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Order of The Court of Appeals . . . . . .

OPINIONS BELOW

Neither the District Court nor the Court of Appeals issued an opinion in connection with this matter.

TABLE OF AUTHORITIES

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Conley v. Gibson, 355 U.S. 41,
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94 S.Ct. 2389,
40 L.Ed. 2d 358 (1974). 7

Stump v. Sparkman, 435 U.S. 349,
98 S.Ct. 1099,
55 L.Ed. 2d 331 (1978). 10

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Third Circuit entered its judgment order affirming the judgment of the District Court For The Western District of Pennsylvania on the 1st of October 1982. On October 22nd 1982 the Court of Appeals entered an order denying the petitioner's petition for rehearing en banc.

The jurisdiction of this Supreme Court over the instant matter subsists by virtue of the Third Article of the Constitution of the United States and an Act of Congress found at 28 U.S.C. §1254 which in pertinent part provides:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

STATUTE

This case involves an Act of Congress now found at 42 U.S.C. §1983. Said statute provides:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

The petitioner Kenneth Bialecki — the plaintiff in the District Court — was summoned to appear in the City Court of Pittsburgh and answer charges upon a complaint lodged against him in connection with an incident which had occurred on the 14th of October 1981. The hearing was to be held on November 4th 1981. Prior to that date Mr. Bialecki had retained counsel to represent him at that hearing.

The City Court of Pittsburgh is a court of non-record and limited jurisdiction. Magistrates sitting in that court are not vested with contempt of court powers.

On the morning of November 4th Mr. Bialecki appeared with counsel at the City Court. Before the hearing commenced counsel left the room to speak with another client who was then being held in a detaining cell contiguous to the court. Mr. Bialecki was, naturally, still at liberty.

While his lawyer was yet absent, Mr. Bialecki's case was called for hearing before the respondent, a magistrate sitting in the City Court. Mr. Bialecki asked permission of the magistrate to call his attorney — then not more than 30 feet away — so that he might be represented by counsel. His request was denied.

The hearing begun and in consequence of being without an attorney Mr. Bialecki was forced to enter a plea of guilty. Magistrate Little thereupon passed sentence, to wit, a fine and court costs. The fine and costs were the sole elements of that sentence.

Then without explanation magistrate Little ordered a turnkey who was standing nearby to take Mr. Bialecki from the Court and imprison him in the aforementioned cell. The turnkey carried out the order.

Mr. Bialecki's attorney subsequently discovered that his client had been jailed. He immediately examined the case disposition sheet kept by the court and found that his client had been sentenced to pay a fine. There was no indication that imprisonment was to be a part of the sentence.

Counsel then confronted magistrate Little and questioned the validity of his client's incarceration. He was told that the matter would be considered later. When counsel protested he was sarcastically advised to take the case to the Supreme Court.

After a number of hours Mr. Bialecki was released from the cell and brought once again before magistrate Little. Counsel attempted to stand beside his client in order to hear the court's explanation of the imprisonment. Magistrate Little ordered counsel from the room and proceeded to admonish Mr. Bialecki.

Mr. Bialecki thereafter instituted an action in the District Court pleading claims arising under the Civil Rights Act of 1871 (42 U.S.C. §1983) and appending claims for false imprisonment under the laws of the Commonwealth of Pennsylvania. The District Court had jurisdiction by virtue of an Act of Congress found at 28 U.S.C. §1343. The action sought compensatory and punitive damages for the violation of Mr. Bialecki's civil and constitutional rights by magistrate Little and the political entity empowering him, The City of Pittsburgh.

Both defendants then moved to dismiss the action, magistrate Little upon the ground that he was immune from such action and The City on the basis that the complaint failed to set forth a claim. Following argument on the motions the District Court ordered the action dismissed. No opinion was issued.

Mr. Bialecki thus prosecuted an appeal to the Court of Appeals For The Third Circuit. That tribunal affirmed the District Court's order of dismissal. Again no opinion was issued. A petition for rehearing en banc was denied.

Hence comes this petition.

I.

ARGUMENT

A FEDERAL COMPLAINT CHARGING A MUNICIPAL CORPORATION WITH LIABILITY UNDER 42 U.S.C. §1983 FOR THE CIVIL AND CONSTITUTIONAL TORTS OF ONE OF ITS OFFICERS NEED NOT PARTICULARLY AVER THAT THE WRONG COMPLAINED OF RESULTED FROM A MUNICIPAL CUSTOM OR POLICY IN ORDER TO OVERCOME A MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM.

The petitioner's claim against The City of Pittsburgh arose under §1983 as interpreted in Monell v. New York City Department of Social Services, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed. 2d 611 (1978). That is to say, that petitioner's theory of liability was that magistrate Little's constitutional torts came in furtherance of a City custom or policy and accordingly the City should be held to answer for its officer's wrongs. Apparently the District Court dismissed this claim on the grounds that the complaint did not specifically

aver the City's policy or custom of constitutional abridgments. This dismissal was therefore in error.

Under the Federal Rules of Civil Procedure it is not necessary for a plaintiff to plead every element of his claim in order to survive a motion to dismiss. By rule 8(2) of the Federal Rules plaintiff need only set forth "a short and plain statement of his claim showing that the pleader is entitled to relief." Indeed, it is a fundamental rule of Federal procedure that a complaint should not be dismissed for failure to state a claim unless it is clear that under no circumstances could the plaintiff present proof upon his claim entitling him to relief, Scheur v. Rhodes, 416 U.S. 986, 94 S.Ct. 2389, 40 L.Ed. 2d 358 (1974) and Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed. 2d 80 (1956).

At the very least a plaintiff should be allowed to amend his complaint as is provided for by Rule 15(a). That provision would appear to accord the pleader a right to amend prior to the service of a responsive pleading. And this notwithstanding a motion to dismiss, for the term "responsive pleading" calls for an actual pleading and not a mere motion.

II.

ARGUMENT

MAGISTRATES SITTING IN COURTS OF LIMITED JURISDICTION AND NON-RECORD SHOULD BE HELD LIABLE UNDER 42 U.S.C. §1983 FOR THEIR CIVIL AND CONSTITUTIONAL WRONGS.

The District Court erred in dismissing the petitioner's claim against magistrate Little. Although judges presiding over courts of general and superior jurisdiction have been held immune from actions brought under §1983, this Court has never applied the immunity doctrine to members of the minor judiciary, in other words, to magistrates sitting in courts of non-record and limited jurisdiction.

The common law rule of immunity as detailed in Bradley v. Fisher, 13 Wall 335 (1871) and as later applied to §1983 suits in Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed. 2d 288 (1967) and Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed. 2d 331 (1978) specifically defines the courts whose officers are thereby covered as being those of general and superior competence.

It appears that this Court has never passed upon the question herein presented.

WHEREFORE the petitioner prays this Supreme Court of the United States to issue the writ of certiorari and thereby review the judgment of the Court of Appeals in this case.

Respectfully submitted,

Paul J. McArdle
For The Petitioner

1311 Manor Building
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Counsel for the petitioner does hereby certify that copies of the instant petition have been furnished to counsel for the respondents herein.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KENNETH W. BIALECKI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 82-0049
	)	
WALTER R. LITTLE, individual, and THE CITY OF PITTSBURGH, municipal corporation,	)	
	)	
Defendants.	)	

ORDER OF COURT

AND NOW, to-wit, this 10th day of March, 1982, the defendants having filed Motions to Dismiss, after careful study of the briefs filed and oral argument, for the reasons stated on the record from the bench, it is hereby ORDERED, ADJUDGED and DECREED that said Motions to Dismiss be and the same they are hereby GRANTED, and the Complaint filed be and the same hereby is DISMISSED as to both of the above-named defendants.

Maurice B. Cohill Jr.
UNITED STATES DISTRICT JUDGE

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 82-5225

KENNETH W. DIALECKI,
Appellant

v.

WALTER R. LITTLE, individual and
THE CITY OF PITTSBURGH, municipal
corporation

On Appeal from the United States District Court
for the Western District of Pennsylvania
C. A. No. 82-00049

Submitted Under Third Circuit Rule 12(6)
September 15, 1982

Before: ADAMS, HUNTER and BECKER, Circuit Judges

JUDGMENT ORDER

After considering all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

Circuit Judge

ATTEST:

Sally Byron, Clerk

DATED: OCT 1 1982

United States Court of Appeals

FOR THE THIRD CIRCUIT

No. 82-5225

KENNETH W. BIALECKI,
Appellant

v.

WALTER R. LITTLE, et al., etc.

(C. A. No. 82-00049)

SUR PETITION FOR REHEARING
EN BANC

Present: SEITZ, Chief Judge, ALDISERT, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER and BECKER, Circuit Judges.

The petition for rehearing filed by Appellant

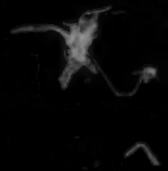
in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

Dated: OCT 22 1982

Circuit Judge

Opposition



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No. 82-803

IN THE

SUPREME COURT OF THE UNITED STATES

KENNETH W. BIALECKI,
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v.

WALTER R. LITTLE,
an Individual,

and

THE CITY OF PITTSBURGH,
a Municipal Corporation,
Respondents

BRIEF OF WALTER R. LITTLE IN OPPOSITION TO PETITION FOR THE ISSUANCE OF A WRIT OF CERTIORARI

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THE CITY OF PITTSBURGH, a Municipal Corporation,

Respondents

BRIEF OF WALTER R. LITTLE IN OPPOSITION TO PETITION FOR THE ISSUANCE OF A WRIT OF CERTIORARI

STATEMENT OF FACTS

Kenneth Bialecki, Petitioner, was arrested on October 14, 1981 on the charge of disorderly conduct. On November 4, 1981, he was summoned before the City Court of Pittsburgh to answer for these charges. The City Court is a court of non-record, with limited powers specified in 42 Pa.C.S.A. §1141. *et seq.*

Petitioner averred in his Complaint to the District Court that although he appeared with counsel on that date, counsel left the courtroom to speak with another client and was not present when Petitioner's case was called before the court, Walter Little, District Justice of the City Court of Pittsburgh, Respondent, presiding.

Petitioner appeared without counsel and pleaded guilty to the summary offense and was sentenced to pay a fine and costs. Thereafter, and in open court, Petitioner declared that under no circumstances would he pay a fine and the court could do whatever it wanted. Rule 65 of the Pennsylvania Rules of Criminal Procedure, 42 Pa.C.S.A. (1982 Pamphlet), provides that a defendant in default on such payments may be committed to prison. He was subsequently detained in the courthouse cell. Hours later, Petitioner was admonished by the District Justice and thereafter released.

Based on the foregoing facts and circumstances, Petitioner instituted this action in the United States District Court for the Western District of Pennsylvania, No. 82-0049, claiming a violation of his civil rights and false imprisonment, against the District Justice and the City of Pittsburgh.

Motions to Dismiss by both Defendants were granted, by Order of United States District Judge Maurice B. Cohill, Jr. The District Justice premised his Motion upon the theory of judicial immunity and the City of Pittsburgh premised its Motion upon Appellant's failure to state a claim upon which relief could be granted.

An appeal was taken by Petitioner to the United States Court of Appeals for the Third Circuit, No. 82-5225, which affirmed the trial court's order of dismissal by Order of October 1, 1982. It is to this order that Petitioner seeks a Writ of Certiorari.

SUMMARY OF THE ARGUMENT

Judges are clothed with an absolute judicial immunity for acts committed within their jurisdiction. *Pierson v. Ray, infra.* Petitioner argues that the Respondent District Justice Little is not so clothed because he sits on a court of limited jurisdiction. The case law is clear, however, that the immunity extends to judicial officers who sit on courts of limited jurisdiction as well as to those of general or superior jurisdiction.

ARGUMENT

I. The lower court did not err in affirming the dismissal of the Complaint filed in this matter on the basis of judicial immunity.

The gravamen of Petitioner's argument is that "magistrates presiding over courts of less than general jurisdiction have no immunity from §1983 actions." Petitioner neither asks this Court to change the common law rule as to judicial officers nor does he challenge the Respondent's jurisdiction over summary criminal proceedings. He asserts that the applicable law, by negative implication, limits judicial immunity to judges who sit in general or superior jurisdiction. Such an assertion has no basis in law or the policies served by the doctrine of judicial immunity.

The law is clear and well established that where there is no "clear absence of jurisdiction" a judge is absolutely immune from damages in a §1983 action. *Pierson v. Ray*, 386 U.S. 547, 554-555, 18 L.Ed.2d 288, 294, 87 S.Ct. 1213 (1967); *Stump v. Sparkman*, 435 U.S. 349, 356-357, 55 L.Ed.2d 331, 339, 98 S.Ct. 1099 (1978). Petitioner's argument revolves solely around the language of *Stump, supra*, which reads in pertinent part, that: " 'judges of courts of *superior or general jurisdiction* are not liable to civil actions for their judicial acts. . . .' " (Emphasis added). *Stump v. Sparkman*, 435 U.S. at 355-356, 55 L.Ed.2d at 338, quoting *Bradley v. Fisher*, 13 Wall. 335, 347, 20 L.Ed. 646 (1872). In *Stump*, the defendant was a judge of general jurisdiction; therefore, it was unnecessary for the court to fashion a rule beyond the scope of the case.

Contra to what the Petition asserts, the doctrine has not been limited to courts of general or superior jurisdiction. In *Pierson v. Ray, supra*, a §1983 action was brought against a municipal police justice, among others, by several black plaintiffs for the justice's actions

arising from the illegal arrest and conviction of the plaintiffs for entering a segregated restaurant. This Honorable Court affirmed the Fifth Circuit dismissal of the action based upon the judicial immunity doctrine. In so doing, Justice Warren, speaking for eight members of this Court, opined:

> We find no difficulty in agreeing with the Court of Appeals that Judge Spencer is immune from liability for damages for his role in these convictions . . . Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872). This immunity applies even when the judge is accused of acting maliciously and corruptly and it "is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their function with independence and without fear of consequences." (Scott v. Stansfield, LD 3 §220, 223 (1868), quoted in Bradley v. Fisher, supra. 349, note, at 250, 20 L.Ed. at 650) . . .

Id. at 553-554, L.Ed.2d at 294. Although the issue was not directly addressed, the Court extended the immunity to a municipal police judge without first determining whether the judge sat in superior, general, or limited jurisdiction.

Cases which have directly met the issue have determined that judges sitting in courts of less than general jurisdiction are protected by judicial immunity. In *Turner v. Raynes*, 611 F.2d 92 (5th Cir. 1980), the appellants argued that the language of *Stump v. Sparkman, supra*, by negative implication, denies a justice of the peace the protection of judicial immunity. The court analyzed the doctrine and determined that in light

of the Court's decision in *Butz v. Economic*, 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978) (holding that administrative law judges are absolutely immune from damages liability for judicial acts), the contention that courts of limited jurisdiction are not so clothed is totally without merit:

> In the face of this approach to administrative immunity it is scarcely conceivable to us that were the [Supreme] Court faced squarely — as we are here — with determining the type of damages immunity to be accorded a lesser state judicial office, it would return to and espouse such an archaic and non-functional distinction as its earlier opinions have discussed and hinted at but never adopted. We do not see how such rules could co-exist in jurisprudence.

Turner v. Raynes, 611 F.2d at 96. In light of the foregoing analysis, the Court held, at 97:

> Finally, we see no reason in policy to apply a different rule to judges exercising limited jurisdiction than to those having a general one. As the Supreme Court has noted, jurisdictional questions are often difficult ones [*Stump v. Sparkman*, 435 U.S. 349, 356 98 S.Ct. 1099, 55 L.Ed.2d 351 (1978)]; they are no less difficult for judges of lesser courts than for those of superior ones, and we see no more reason why the former should be required to decide them under the threat of damages suits than should the latter. . . . We therefore believe that defendant Raynes is entitled to the same immunity as a justice of the peace, as he would be accorded were he the magistrate of a superior court.

The Courts in the Third Circuit have followed this line of reasoning as well. In *Fox v. Castle*, 441 F.Supp. 411 (M.D. Pa. 1977), the court granted the defendant

magistrate's motion to dismiss on judicial immunity grounds. The court simply opined:

> It is a settled rule that a judge is not liable for acts performed in a judicial capacity even though his acts are in excess of his jurisdiction and done maliciously, corruptly, or arbitrarily. Pierson v. Ray, 386 U.S. 547, 553-555, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967). Justices of the Peace, it is also well established, fall within the ambit of this doctrine. See Pratt v. Johnson, 264 F.Supp. 167, 170 (M.D. Pa. 1967); Hohensee v. Hart, Civil No. 75-464 (M.D. Pa. June 22, 1976).

Id. at 412. In *Pennebaker v. Chamber*, 437 F.2d 66 (3d Cir. 1970), the court determined that the suits against a justice of the peace for damages must be dismissed as legally frivolous "because he was sued for actions concerned with the discharge of his duties and was therefore immune from such suit." *Id.* at 67, citing *Pierson v. Ray, supra*. The immunity of limited jurisdictional judges is not without other support. *See, e.g., Pitt v. Coxe*, 65 F.R.D. 355, 356 (E.D. Pa. 1975); *Lucarell v. McNair*, 453 F.2d 836, 838 (6th Cir. 1972) *Reilly v. Doyle*, 483 F.2d 123, 128 (2nd Cir. 1973); *Krueger v. Miller*, 489 F.Supp. 321, 327 (E.D. Pa. 1978) *aff'd.* 617 F.2d 703 (3d Cir. 1980) and cases cited therein.

The policy consideration underlying the immunity doctrine is as applicable to judges sitting in courts of limited jurisdiction as it is to judges who sit in general or superior courts. This policy was declared in *Stump v. Sparkman*, 435 U.S. at 355, 55 L.Ed.2d at 338:

> The governing principle of law is well established and is not questioned by the parties. As early as 1872, the Court recognized that it was "a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him [should] be free to

> act upon his own convictions without apprehension of personal consequence to himself."

(Quoting from *Bradley v. Fisher, supra*). It is this same policy reason which has extended the immunity doctrine in §1983 actions to a variety of disciplines. *See, e.g., Pierson v. Ray, supra,* (police immunity); *Scheurer v. Rhoades,* 416 U.S. 232, 40 L.Ed.2d 90, 94 S.Ct. 1683 (1974), (Governor and state executive officer's immunity); *Last Term in Wood v. Strickland,* 420 U.S. 308, 43 L.Ed.2d 214, 98 S.Ct. 992 (1978), (school immunity); *Imbler v. Pachtman,* 424 U.S. 409, 47 L.Ed.2d 128, 96 S.Ct. 984 (1976) (prosecutors' immunity), wherein the court stated, 424 U.S. at 423, 47 L.Ed.2d at 139:

> The common law immunity of a prosecutor is based upon the same considerations that underlie the common law immunities of judges and grand jurors acting within the scope of their duties. These include concern that harassment by unfounded litigation would cause a deflection of the prosecutor's energies from his public duties, and the possibility that he would shade his decisions instead of exercising the independence of judgment required of his public trust.

This same fundamental reasoning applies to judicial officers with limited jurisdiction as well. The questions of law are no less difficult for judges of lesser courts than for those of superior courts. *See Turner v. Raynes,* 611 F.2d at 97. Without such an immunity a district justice would not be free to exercise the independent judgment required of his position.

CONCLUSION

This case presents no new and significant federal issue, the subject of disagreement among various federal jurisdictions, or an outcome in conflict with decisions of this Court.

Respectfully submitted,

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Legal Counsel to the Administrator
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Attorneys for Respondent
Walter R. Little

Counsel for Respondent Walter R. Little hereby certifies that copies of the instant Brief have been furnished to counsel for Petitioner and Respondent The City of Pittsburgh.